FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.3534 OF 1997

1) Madhav Mishra)
aged 38 yrs. S/o.Shrikant Mishra)

2) Sonelal Shri Narayan Mishra)
aged 27 yrs.)

3) Pawankumar Pratap Narayan Mishra)
aged 32 years)

4) Gulab Mishra, aged 47 years)

5) Lalan Mishra, aged 27 years)
S/o Bachulal Mishra)

6) Chandrashekar Bhagwat Narayan)
Mishra, aged 34 years)

7) Ramanandan Asarfi Yadav)
aged 42 years)..Applicants

Versus

1) The State of Maharashtra)

2) Shri Shivanand S/o Yendunandan Jha)
aged about 54 years, residing at)
Vaishnav R.M.Mandir, Near Western)
Express Highway, Janata Colony)
Jogeshwari (E), Mumbai-400 060.)..Respondents

Mr.Subhash Jha for the applicants.

Mr.Manoj Singh h/for Mr.Diwakar Dwvedi for Respondent no.2.

Mr.P.S.Hingorani APP for the State.

Coram : R.S.Mohite,J

Date : 15.6.2006.

Judgment :-

1. This is an application for quashing the proceedings in Criminal Case No.163/S/94 pending in the Court of the Metropolitan Magistrate, 44th Court Andheri, Mumbai and for further quashing and setting aside issuance of process in the said case vide order dated 13.12.1994 passed by the concerned Magistrate.

2. I have heard both sides at length. It appears that the said criminal case was filed by the present respondent no.2 on 2.8.1993. The verification of the complaint was effected on 9.11.1999. It appears that police enquiry was directed under Section 202 of the Cr.P.C. and after the police report was received and perused by the Metropolitan Magistrate on 15.12.1994, process was issued for the offence under Sections 323, 504, 506-II and 357 of IPC.

3. The present application has been filed without enclosing the statements recorded by the police or the police report which are the documents upon which the impugned order was inter alia based. On making enquiry, the Advocate for the applicants fairly stated that no attempt has been made to obtain certified copy of the statement recorded by the police or of the police report which was one of the documents on the

basis of which the impugned order was passed. On this ground alone, the application is liable to be dismissed.

4. Apart from this, with regard to the Complaint, it relates to two incidents which have allegedly occurred on 20.7.1993 & 24.7.1993. It was sought to be contended that the Complaint was false because on 22.7.1993, accused no.3 Pawankumar Mishra was arrested and produced before a Court in Bihar. Similarly accused no.2-Sonelal Mishra, accused no.3-Fanainath Mishra, accused no.4-Gulab Mishra and accused no.5 Lalan Mishra were also arrested and produced before a Bihar Court on 24.9.1993. In short, it was contended that accused nos.2, 3, 4 & 5 had an cast iron alibi because they were in a Bihar Court on 24.7.1993. On the basis of this, it was sought to be contended that the complaint must be held to be fraudulent and false. In order to show that accused nos.2, 3, 4 & 5 were in Bihar, reliance was placed on document at Exhibit-D. This document appears to be a zerox copy of a roznama with hand written notes in the heading thereof. The document shows that the signatures of various persons who have signed the entries purported to be that of a Court officer, Bihar Court are illegible. It must be remember that alibi is a permitted defence but the same is required to be proved. It was sought to be contended that the document at Exhibit-D which purports to be a roznama is a public document and can be proved

by certified copy. Exhibit-D is clearly not a certified copy. It is a zerox copy of some document. The original of this could not be produced. The defence of alibi will have to be proved at the trial after giving sufficient opportunity to the Complainant to meet this defence. The Advocate for the applicants produced a compilation of judgments in order to buttress contention that fraud would vitiate all proceedings and orders passed there on. The compilation has been taken on record and the citations are given in the said compilation. I have no quarrel with the proposition as propounded but needless to say that fraud must first be proved. In the present case the stage of proof has not been reached. I cannot make any observation at this stage relating to the genuiness of the roznama. This is a matter which will have to be tested in the trial. In one of the cases contained in the compilation and strongly relied upon by the applicant i.e. the case of **Manohar M.Gilani Vs. Ashok N.Advani & Anr.** reported in (1999) 8 SCC 737 there were serious allegations about the judicial magistrate issuing warrant illegally against people holding high public office. On the basis of facts of this case it was sought to be argued that fraud need not be proved and if the Court prima facie forms an impression that there might be a fraud, an enquiry can be initiated without complete proof. The facts of that case before the Apex Court were different. Counsel for both sides agreed before the Apex Court that there was a fraud and

both sides agreed that the impugned order ought to be set aside. Further the said case involved fraud by a judicial officer. In the present case only process has been issued. If ultimately complaint is found to be false or frivolous then the law provides for legal action which can be taken against the Complainant. In the circumstances, not a fit case to interfere with. Hence, application is dismissed. Rule stands discharged. Interim relief stands vacated.

(R.S.Mohite,J)